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STATE PROCUREMENT OFFICE
STATE OF HAWAII

STATE PROCUREMENT OFFICE NOTICE OF AND REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS

1. TO: Chief Procurement Officer
2. FROM: Richard Lim, DBEDT Director

Department/Division/Agency

Pursuant to §103D-102(b)(4), HRS, and Chapter 3-120, HAR, the Department requests a procurement exemption to purchase the following:

3. Description of goods, services or construction:

Requesting exemption from Chapter 103D for the Community-Based Economic Development Revolving Fund, Chapter 210D.

4. Name of Vendor: ~~N/A~~ Various *dhk*

Address:

5. Price:

\$500,000 *dhk*
approx. ~~N/A~~

6.

Term of Contract:

From: N/A

CPO Approval *dhk*

To:

24 months

7. Prior Exemption Ref. No.

0

8. Explanation describing how procurement by competitive means is either not practicable or not advantageous to the State: In many instances, Chapter 210D is in direct conflict with Chapter 103D. Chapter 103D was adopted to bring transparency and fairness to the State's procurement of goods and services. In Chapter 210D's grant awards process, no goods or services are procured, acquired, or disposed of by the State. Grant applicants describe in their applications what assistance they seek, what it will be used for, and how it will assist in community-based economic development. 210D-11 provides by law the grant standards, conditions, and qualifications, as required by Article VII, Section 4 of the State Constitution. To help understand the differences in the chapters, a side-by-side comparison is attached.

9. Details of the process or procedures to be followed in selecting the vendor to ensure maximum fair and open competition as practicable:

Both the CBED Program's grant contract and letter of agreement processes in flowchart form are attached.

REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS (Cont.)

10. A description of the agency's internal controls and approval requirements for the exempted procurement:

Both the CBED Program's grant contract and letter of agreement processes in flowchart form are attached.

12. A list of agency personnel, by position, who will be involved in the approval process and administration of the contract:

Name	Position	Involvement in Process	
Wayne Thom	CBED Manager/staff	<input type="checkbox"/> Approval	<input checked="" type="checkbox"/> Administration
CBED Advisory Council	Appointed by Governor	<input type="checkbox"/> Approval	<input checked="" type="checkbox"/> Administration
DBEDT Director or rep	Director/Administrator	<input checked="" type="checkbox"/> Approval	<input type="checkbox"/> Administration
		<input type="checkbox"/> Approval	<input type="checkbox"/> Administration
		<input type="checkbox"/> Approval	<input type="checkbox"/> Administration
		<input type="checkbox"/> Approval	<input type="checkbox"/> Administration

13. Direct inquiries to:

Department: DBEDT
Contact Name: Wayne Thom
Phone Number: 808-586-2582
Fax Number: 808-586-2589

Agency shall ensure adherence to applicable administrative and statutory requirements

14. *I certify that the information provided above is, to the best of my knowledge, true and correct.*



Department Head

MAR 23 2011

Date

Reserved for SPO Use Only

15. Date Notice Posted 3/30/2011

The Chief Procurement Officer is in the process of reviewing this request for exemption from Chapter 103D, HRS. Submit written objections to this notice to issue an exemption from Chapter 103D, HRS, within seven calendar days or as otherwise allowed from the above posted date to:

Chief Procurement Officer
State Procurement Office
P.O. Box 119
Honolulu, Hawaii 96810-0119

REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS (Cont.)

Chief Procurement Officer's comments:

SEE CPO COMMENTS BELOW.

16.



APPROVED



DISAPPROVED



NO ACTION REQUIRED

 6/30/2011
 Chief Procurement Officer Date

CPO COMMENTS:

The department has determined that the review of applications for grants for the Community-Based Economic Development Fund are subject to HRS Chapter 92, which would allow the public to view these applications, make comment and have discussions about the applications which would conflict with the HAR sections below during the Competitive Sealed Proposals (CSP) method of procurement.

HAR §3-122-9.01(a)	A purchasing agency is not required to disclose information . . . until posting of the award . . .
HAR §3-122-51(a)(1)	Proposals and modifications shall not be opened publicly . . .
HAR §3-122-51(a)(2)	Proposals and modifications shall be shown only to members of the evaluation committee and state personnel or their designees having legitimate interest in them.
HAR §3-122-53(f)	The contents of any proposal shall not be disclosed so as to be available to competing offerors during the discussion process.
HAR §3-122-58(b)	. . . shall be available for public inspection upon posting of award . . .

Due to this conflict and to allow disclosure for public review and input prior to award, a limited exemption for only those 5 HAR sections noted above is approved for 24 months from the date of the CPO approval. Additional requests for exemption from HRS Chapter 103D may be submitted as an amendment to this procurement exemption.

Comparison: 103D vs. 210D	
103D	210D
<i>Procurement Advisory Groups</i> Appointed by the Chief Procurement Officer	<i>CBED Advisory Council</i> Appointed by the Governor
<i>Methods of Source Selection:</i> <ul style="list-style-type: none"> • Competitive Sealed Bid • Professional Services Procurement • Small Purchases • Sole Source Procurement • Emergency Procurements 	<i>CBED Grants Program</i> <ul style="list-style-type: none"> • CBED Grant Application from IRS designated 501 (c) (3), membership (community-based) organizations. • After advertised Notice Of Funding Availability (NOFA), any qualified organization may submit a grant application. • No grantee may have more than one grant at a time.
<i>Competitive Sealed Bidding</i> <ul style="list-style-type: none"> • Competitive sealed bidding • Award based on criteria in invitation for bid. Invitation includes purchase description. Bids opened publicly in presence of 1 or more witnesses. Bids unconditionally accepted – no alteration or correction. 	<i>CBED Revolving Fund Grants Award</i> <ul style="list-style-type: none"> • CBED staff reviews for qualification(i.e., • 501 (c) status, community-based, etc). Forward to CBED Advisory Council to review and make recommendation to Director for funding. Council and staff may recommend changes in award amounts based upon need and funds use qualifications. • Director approves final funding amount.
<i>Purchase Description</i> When not practical to prepare purchase description, invitation requests unpriced offers to be followed by invitation for bids.	<i>Project and Budget</i> Project, budget and necessary services and supplies (qualified) are determined by the applying organization.
<i>Request For Proposals</i> <ul style="list-style-type: none"> • Proposals opened so as to avoid disclosure of contents to competing offerors during process of negotiation. • Award made to offeror whose proposal is most advantageous (to State) in regards to price and other evaluation factors. 	<i>CBED Grant Awards</i> <ul style="list-style-type: none"> • Applications are deemed public documents, available for review. Private contact information is deemed confidential, but budget and project description are open to public review, as is information regarding the non-profit organization. • Awards are given year-round, or as long as the amount of funding available in a given year is not depleted. • Each qualified grant application is

	considered for funding.
<p>Procurement of Professional Services</p> <ul style="list-style-type: none"> • Chief procurement officer has 10 days after receiving purchasing agency's request to act on request. • All requirements for professional services publicly announced. • For amounts less than \$10,000, price is negotiated by procurement officer with any two persons on a list of qualified persons. 	<p>CBED Grant Awards</p> <ul style="list-style-type: none"> • Grant application are handled by staff, the CBED Advisory Council, and the Director or his designate representative. • The Director has the final authority to fund. • No further announcement is made after the grant award. • No negotiating is conducted between organizations. Each organization's application is considered for funding.
<p>Small Purchases Encourages competitiveness (in pricing).</p>	<p>CBED Grant Awards No competition between organizations. Each organization's application is considered for funding.</p>
<p>Sole Source Procurement</p> <ul style="list-style-type: none"> • Only one source for the required good, service or construction. • Purchasing agency to submit written request limited to evidence supporting request. • Chief Procurement Officer may negotiate with sole source vendor for price, terms and conditions that are in State's best interest. 	<p>CBED Grant Awards</p> <ul style="list-style-type: none"> • No competition between organizations. Each organization's application is considered for funding. • Many CBED community projects are similar or needs are similar (i.e., need for a business plan, etc.) • The Director has the final authority to fund.

103D	210D
<p>103D-102(a). Chapter 103D applies to "procurement contracts."</p> <p>103D-104. "Procurement" means acquiring any good, service or construction.</p> <p>103D-104. "Contract" means an agreement for the procurement or disposal of goods or services, or for construction.</p> <p>103D-104. "Grant" means the furnishing of assistance, whether financial or otherwise, to any person to support a program authorized by law. The term does not include an award whose primary purpose is to procure an end product, whether in the form of goods, services, or construction; a contract resulting from such an award is not a grant but a procurement contract."</p>	<p>210D-1. "The purpose of this chapter is to establish a program of technical and financial assistance for community-based organizations to assist the establishment and development of community-based enterprises in the State."</p> <p>The State does not procure or dispose of any goods, services, or construction through CBED grants.</p>
<p>103D Competitive Sealed Proposals (Competitive sealed proposals used as comparison, as other procurement methods clearly would not apply to CBED grants.)</p>	<p>210D CBED Grants (CBED loans are not included, as §103D-102(b)(2)(H) states that chapter 103D does not apply to "loans, under loan programs administered by a governmental body.")</p>
<p>HAR 3-122-45.01 Evaluation committee. Members selected by procurement officer. Cannot disclose information on the evaluation process. Members' names are not public until award of contract.</p>	<p>210D-5, 210D-7 CBED advisory council. Members selected by the Governor and confirmed by the Senate in accordance with HRS §26-34. All evaluations, discussions, and decision making with respect to grants conducted in public meetings in accordance with the Sunshine Law. Members' names are public.</p>
<p>HAR 3-122-46 RFP. Requires specifications for the goods or services to be procured.</p>	<p>No goods or services are procured, acquired, or disposed of by the State. Grant applicants describe in their applications what assistance they seek, what it will be used for, and how it will assist in community-based economic development.</p> <p>210D-11 provides by law the grant standards, conditions, and qualifications, as required by Article VII, Section 4 of the State Constitution.</p>
<p>HAR 3-122-51 Proposals. May only be shown to evaluation committee and state personnel having a legitimate interest. Not public until posting of award.</p>	<p>All grant applications and CBED advisory council's evaluations, discussions, and decision making with respect to the applications are open to the public in accordance with the Uniform Information Practices Act and the Sunshine Law.</p>

<p>HAR 3-122-57 Contract award.</p> <p>Award shall be issued to the proposal determined to provide the best value to the State.</p>	<p>Each qualified applicant is eligible to receive a grant. There is no competition between the applicants. CBED grants are given year-round until funding is depleted. The CBED advisory council and staff may recommend changes in grant amounts (from what is asked for by the applicant) based on need, use, or funding availability.</p>
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Updated 2/24/11

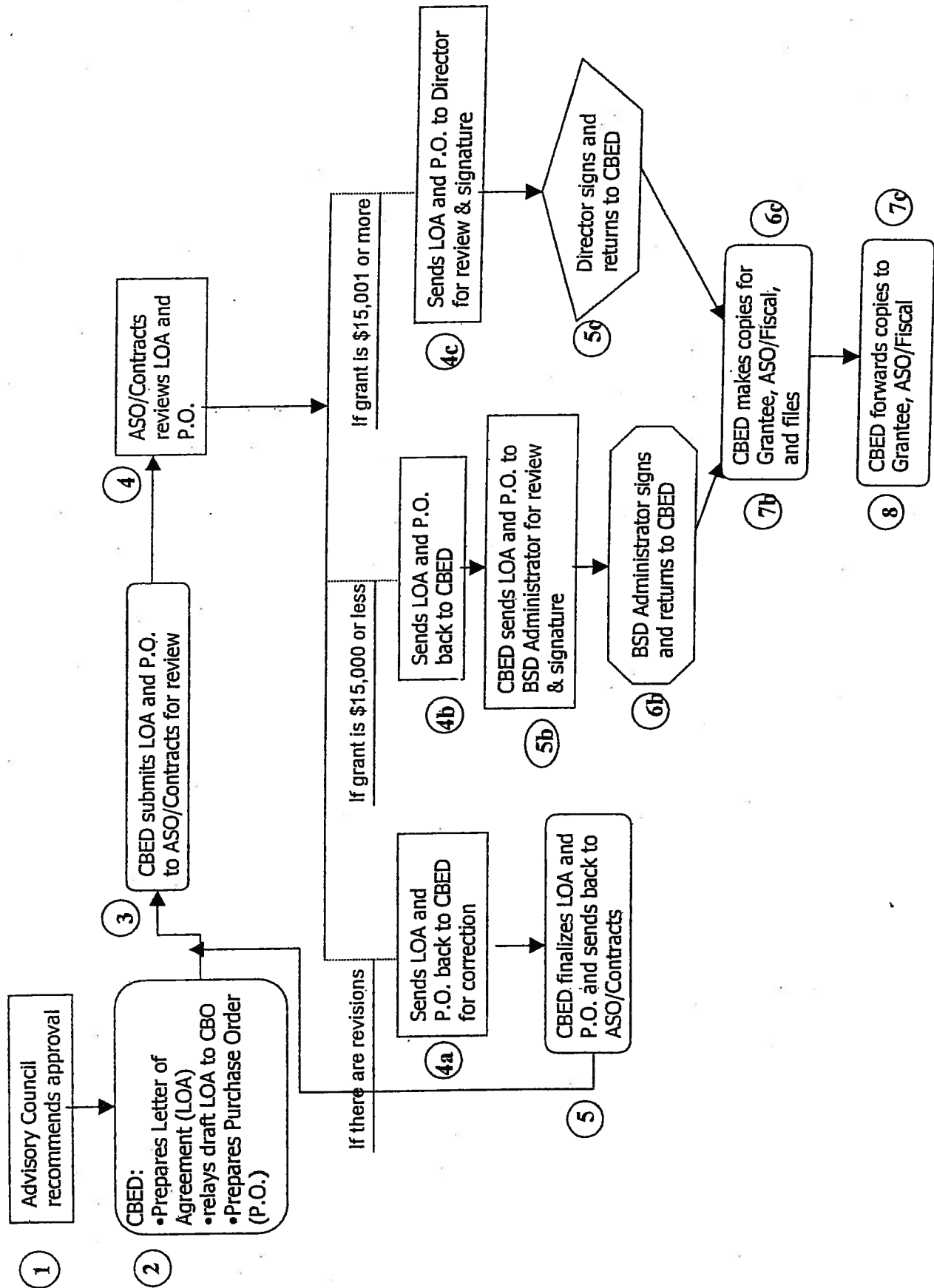
CBED Letter of Agreement Process
CBED Council Approval to Start of Grant Period (Estimated Time)

Step No.	Action	Responsible Party	Week	1	2	3	4	5	6	7	8
1	Recommendation for approval	Advisory Council									
2	Preparation of Letter of Agreement (LOA), Project Approval Form (PAF), and Purchase Order (P.O.) for Contracts review.	CBED									
3	Submits LOA and P.O. to ASO/Contracts for review.	CBED									
4	LOA and Purchase Agreement initially reviewed	ASO/C									
4a	If there are revisions, LOA and P.O. sent to CBED for corrections.	ASO/C									
5	CBED finalizes LOA and P.O. and sends back to ASO/Contracts*	CBED									
4b	If Grant is \$10,000 or less, ASO/C sends LOA and P.O. to TJS for review and signature.	ASO/C									
4c	If Grant is \$10,001 or more, ASO/C sends LOA and P.O. to SFN for review and signature.	ASO/C									
6	PAF and Agreement reviewed, approved, and sent to CBED	TJS or Dir's Ofc									
7	CBED makes copies for Grantee, ASO/Fiscal, and files	CBED									
8	CBED forwards copies of Grantee, ASO/Fiscal	CBED									

* Will take one more week longer if goes through step 4a.

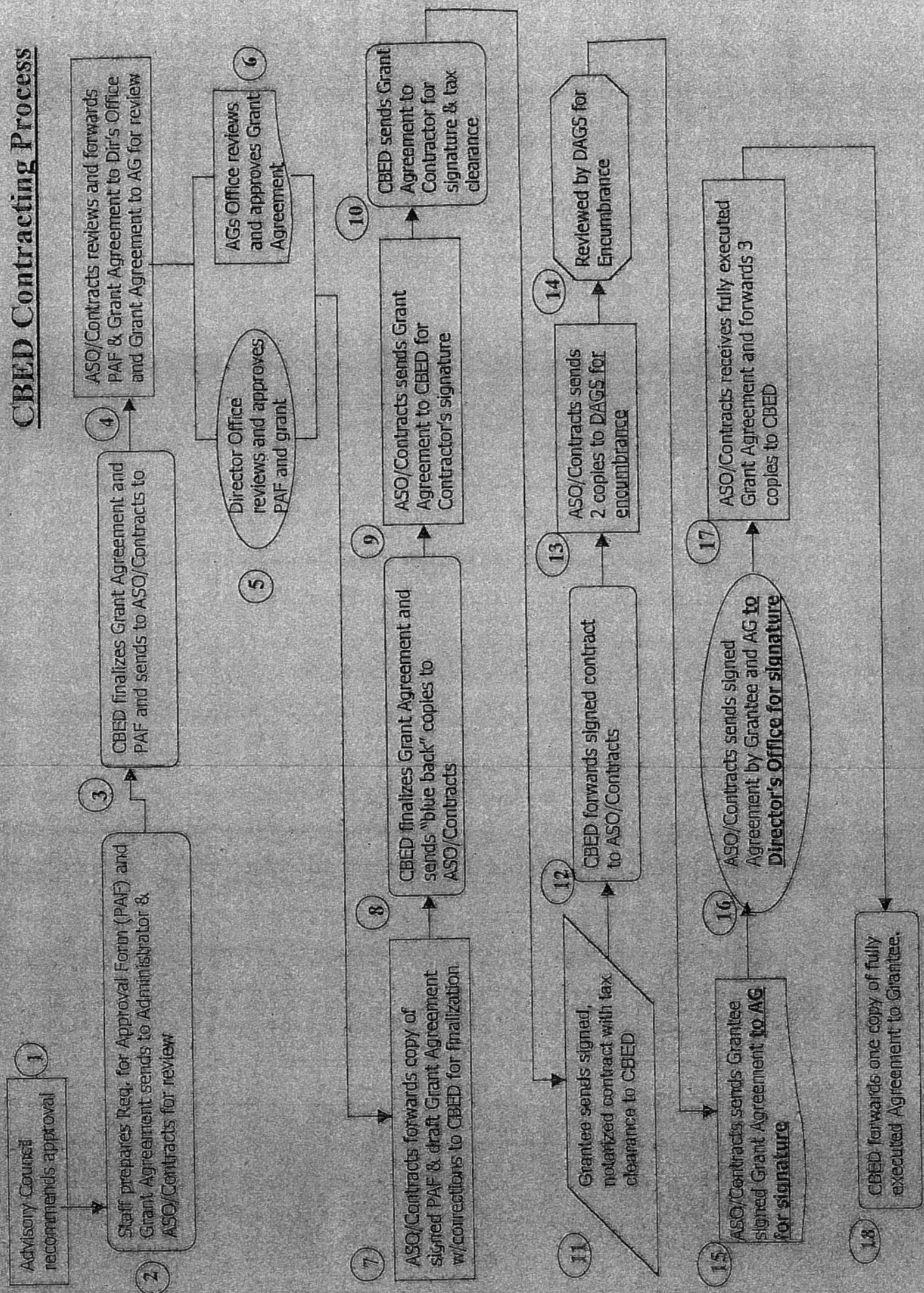
Administrative Services Office/Contracts (ASO/C)

CBED Letter of Agreement (LOA) Process

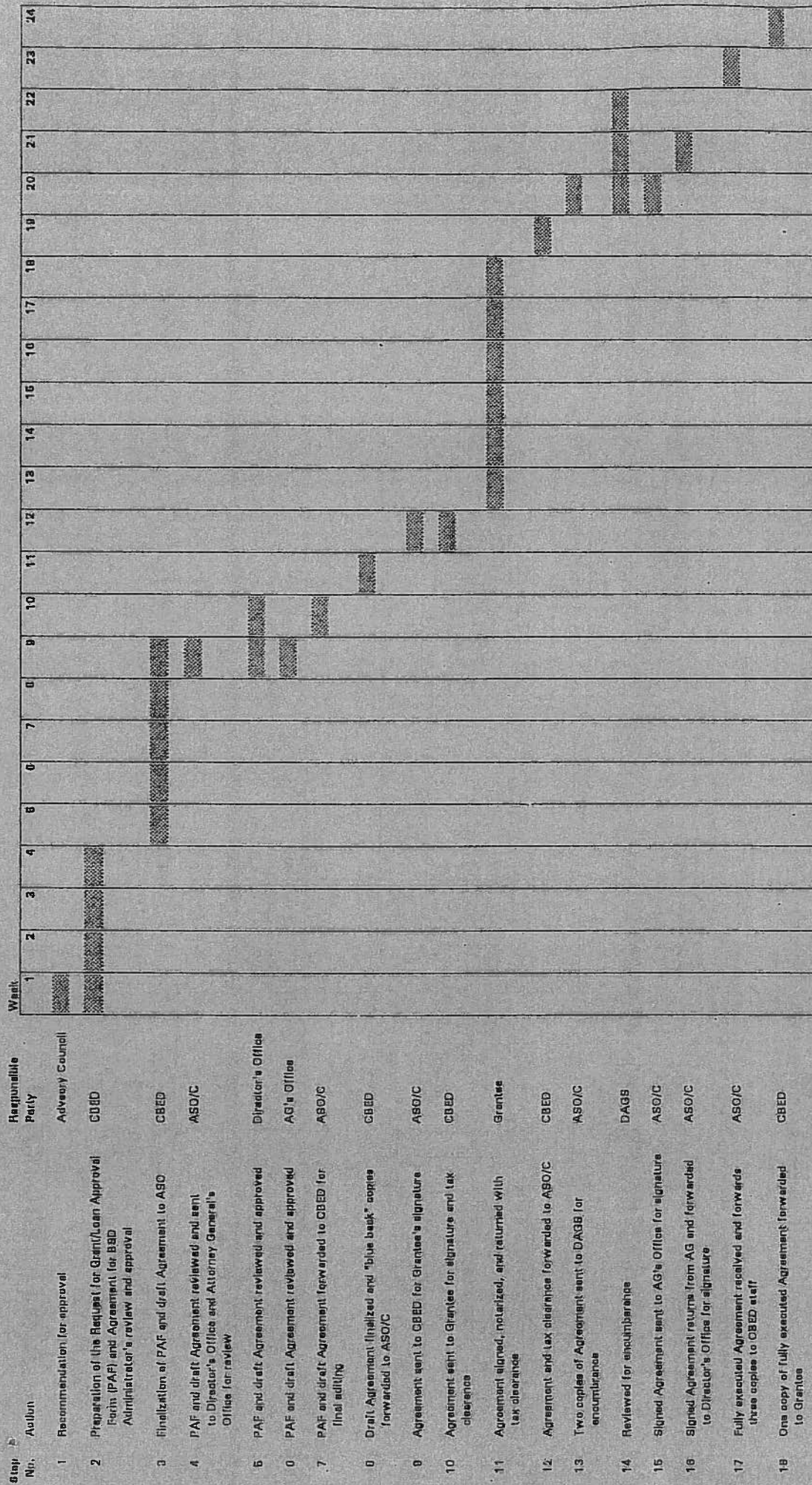


15K - TJS signs p.d.
 25K - DIR. signs p.d.

CBED Contracting Process



CBED Grant Agreement Process
CBED Council Approval to Start of Grant Period (Average Time)



Administrative Services Office/Contracts (ASO/C)
 Attorney General (AG)